IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No.109 of 2005
Decided on 6.10.2012.

Gurdarshan Singh alias Darshan Singh and others

... Petitioners

versus

State of Haryana .... Respondent

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

CORAM : HON'BLE MR.JUSTICE K.C.PURI

Present :- Shri Virender Verma, Advocate for the petitioners.
Shri Amandeep Singh, AAG, Haryana.

K.C.PURI, J.

Challenge in this revision petition is the judgment dated 11.10.2004 passed by Shri Sanjiv Kumar, Additional Sessions Judge, Ambala vide which the appeal preferred by accused/petitioners against the judgment and order dated 20.12.2003 passed by Mr. N.K.Singhal, learned Judicial Magistrate Ist Class, Ambala City, who convicted and sentenced all the accused under Section 392 IPC whereas accused Gurdarshan Singh and Kulwinder Singh were also

convicted under Sections 467 and 468 of the IPC, was dismissed.

2. Briefly stated law was set in motion by recording the statement of Surinder Gupta, Excise Inspector, who stated that on 3.6.2002 he along with Nirmal Prakash (PW-3)peon were on duty and were collecting the tax at Dhulkot. He was doing his job of tax collection. In the meantime, at around 3.00a.m. three young persons came there, one of them was having a revolver in his hand and appeared to be the leader of that gang came there and at about 4.30.am., all these three persons entered the cabin. Two of them were having revolvers and pointed the same towards the complainant and the peon and threatened them not to move and raise noise. The third person collected the entire cash lying in the drawer of the table and all those three persons went away from there telling the complainant etc. not to create noise, otherwise they would be killed. All those three persons went on foot towards Baldev Nagar, when the complainant and the peon came out of the cabin, all those three persons fled away in a Tata Sumo vehicle white colour towards Baldev Nagar. The cash looted by the three persons was Rs.40,840/-. On the basis of aforesaid complaint, FIR was recorded by ASI Narinder Singh and investigation commenced. During investigation, the accused were arrested. Statements of the witnesses were recorded. After completion of the investigation, challan was presented against the accused.

3. On appearance of the accused copies of the documents as relied upon by the prosecution were supplied to the accused free of costs. Accused was charge sheeted under Sections 392, 467, 468 of the IPC and 25 of the Arms Act, to which the accused pleaded not guilty and claimed trial.

4. Prosecution, in order to substantiate its case, examined ASI

Purshottam Dass (PW-1), complainant Surinder Gupta (PW-2), Nirmal Singh (PW-3), HC Naresh Kumar (PW-4), SI Phool Chand, Investigating Officer (PW-5), HC Baljit Singh (PW-6), Hardeep Singh (PW-7), SI Amarjit Singh (PW-8) SI Gurdeep Singh (PW-9), Vikram Singh, Clerk (PW-10), ASI Janak Singh (PW-11), Jarnail Singh (PW-12), Dr. Vandana Bhatia (PW-13), Constable Ram Samajh (PW-14), Draftsman Constable Manohar Lal (PW-15), Om Parkash Bhatia, Reader (PW-16) and closed the prosecution evidence.

5. Accused were examined under Section 313 of the Code of Criminal Procedure and they denied all the allegations of the prosecution and claimed to be innocent. They were called upon to lead their defence evidence but they did not lead any evidence in defence.

6. The learned trial Court, after appreciating the evidence on the file vide judgment and order dated 20.12.2003 convicted all the accused under Section 392 whereas accused Gurdarshan Singh and Kulwinder Singh were also convicted under Sections 467 and 468 of the IPC, and sentenced them as under : -

Offence under Sections	Sentence
<u>All accused-petitioners</u>	
392 IPC	R.I. for three years and to pay Rs.1000/- as fine and in default of payment of fine to further undergo RI for a period of six months.
<u>Gurdarshan Singh and Kulwinder Singh accused-petitioners</u>	
467 IPC	R.I. for three years and to pay Rs.1,000/- as fine and in default of payment of fine to further undergo RI for a period of six months each.

468 IPC	R.I. for two years and to pay Rs.500/- as fine and in default of payment of fine to further undergo RI for a period of six months each.

7. All the sentences were, however, ordered to run concurrently.

8. Feeling dissatisfied with the aforesaid judgment and order dated 20.12.2003 passed by Mr. N.K.Singhal, learned Judicial Magistrate Ist Class, Ambala City, the accused had preferred the appeal. The learned Additional Sessions Judge, Ambala vide judgment dated 11.10.2004, dismissed the said appeal.

9. Still feeling dissatisfied with judgments dated 20.12.2003 and dated 11.10.2004, as aforesaid, the petitioners have preferred the present criminal revision petition.

10. I have heard learned counsel for the parties and have gone through the records of the case with their able assistance.

11. Learned counsel for the petitioners has submitted that according to the initial version of the prosecution, the accused came in Sumo car, whereas the recovery has been shown as that of Maruti car. So, the prosecution story is doubtful.

12. I have considered the said submission, but do not find any force in that submission. The prosecution witnesses have clearly stated that inadvertently Sumo car has been mentioned in the original version. In fact it was a Maruti car.

13. Learned counsel for the petitioners has further submitted that occurrence is stated to be of 3.6.2002, whereas the accused have been stated to be arrested in another case on 20.6.2002. They have been formally arrested in the

present case on 26.6.2002. The recovery of ₹ 7,000/- has been shown from Gurdarshan Singh, recovery of ₹ 7,000/- has also been shown from Nishan Singh alongwith country made pistol and ₹ 6,000/- has been alleged to be recovered from Kulwinder Singh. No independent witness has been examined to prove the recoveries and as such, the recoveries have been planted.

14. I have considered the said submission, but do not find any force in that submission. The accused were arrested in another case on 20.6.2002 and were taken into custody in the present case thereafter. The joining of independent witness is not the rule of law. Sometimes Court insist on independent corroboration in case there is a doubt in the prosecution version. In the present case, there is no doubt in the prosecution version. The official witnesses who have been robbed at the gun point have no axe to grind against the present petitioners. All the petitioners have been duly identified in the Court by the complainant and as well as, by the other eye witnesses. Moreover, both the Courts below have given a concurrent finding of fact regarding the guilt of the accused beyond reasonable doubt. So, the conviction recorded by both the Courts below does not call for any interference.

15. Learned counsel for the petitioners has further submitted that recovery of driving licence from Kulwinder Singh and Gurdarshan Singh is not sufficient to prove the offence under Sections 467 and 468 IPC. There is no evidence on the file that it is these two petitioners, who have forged the said driving licences Exhibits P-1 and P-2.

16. I have considered the said submission, but do not find any force in that submission. It is proved on the file that both the driving licences Exhibits P-

1 and P-2 are not genuine. Both these documents have been recovered from these two petitioners namely, Gurdarshan Singh and Kulwinder Singh. The original licences were issued in the name of someone else other than the petitioners. So, the circumstantial evidence and recovery of the driving licence, proved that these documents are forged documents and the same were being used as genuine by the petitioners. So, the conviction under Sections 467 and 468 IPC also does not call for any interference.

17. Counsel for the petitioners has further submitted that no test identification parade was conducted and on that account, the petitioners cannot be convicted under Section 392 IPC.

18. I have considered the said submission, but do not find any force in that submission. Besides the identification by the complainant and eye witnesses, there is other corroborative evidence in the shape of recovery of amount from the petitioners, as well as, recovery of illegal pistol from Nishan Singh. No doubt, Nishan Singh has not been convicted under Section 25 of the Arms Act, as the prosecution has not produced the said pistol in the present case, but the recovery of forged driving licence from Gurdarshan Singh and Kulwinder Singh further lends support to the prosecution case.

19. Learned counsel for the petitioners has further submitted that PW-3 Nirmal Singh has stated that one of the assailants was having handkerchief on his forehead. So, the identification is not proved.

20. I have considered the said submission, but do not find any force in that submission. Mere tying of handkerchief on the forehead does not mean that accused were of muffled faces. A sum of ₹ 40,840/- belonging to the Tax

Department has been robbed off by the petitioners and out of the said amount ₹ 20,000/- has been recovered from the petitioners as detailed above. There was no reason for the prosecution witnesses to falsely implicate the accused and to allow the actual culprit go scot-free. The custody certificate of Nishan Singh, Gurdharshan Singh and Kulwinder Singh placed on the file also proves that they have committed similar offences earlier also.

21. So far as quantum of sentence is concerned, counsel for the petitioners could not make out a case for reduction of sentence. The accused have been convicted under Section 392 IPC. However, the facts of the present case make out a case that accused should have been dealt under Section 397 IPC, as all of them have committed robbery by using deadly weapon. However, since the State has not preferred any appeal, so, in these circumstances, no case for reduction of sentence is also made out.

22. Consequently, the revision petition is without any merit and the same stands dismissed.

23. Accused are stated to be on bail. They be taken into custody to undergo the remaining part of sentence awarded by the trial Court.

24. A copy of the judgment be sent to the trial Court for strict compliance.

(K.C. Puri)
Judge

October 6 , 2012
sv/chugh